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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,221	12/11/2000	Dan R. Littman	1049-1-004n2	6077

7590 08/25/2004

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EXAMINER	
LI, BAO Q	

ART UNIT	PAPER NUMBER
1648	

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/734,221	Applicant(s) LITTMAN ET AL.	
	Examiner Bao Qun Li	Art Unit 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26, 33-40 and 61-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-26, 33-40 and 61-73 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In view of the preliminary amendment, claims 27-32 and 41-60 are canceled. New claims 70-73 are added. Claims 1-26, 33-40 and 70-73 are pending. the previous Office Action of Restriction/Election mailed on May 19, 2004 is vacated. A new Office Action on restriction/Election requirement follows:

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-6, drawn to a method for identifying a presence of a translocation promoting agent, classified in class 435, subclass 3.
 - II. Claims 7-9, drawn to a method for identifying viral envelope glycoprotein binding to a translocating promoter agent, classified in class 435, subclass 7.93.
 - III. Claim 10, drawn to an assay for screening drug against HIV viral entry, classified in class 435, subclass 4.
 - IV. Claims 11-13, drawn to a kit, classified in class 435, subclass 975.
 - V. Claims 14-18, drawn to a method for preventing and/or treating HIV infection, classified in class 424, subclass 93.2.
 - VI. Claims 19-21, drawn to a pharmaceutical composition comprising CC-CKR5, classified in class 530, subclass 300.
 - VII. Claims 22-26, and 38, drawn to a non-human transgenic animal, classified in class 800, subclass 350.
 - VIII. Claim 33, drawn to a cell transfected with CD4 and a mimic of the translocation promoter agent, classified in 435, subclass 325.
 - IX. Claims 34-36, drawn to an antisense nucleic acid against an mRNA of CCR5 and a transfected cell line, classified in class 536, subclass 24.5.
 - X. Claims 37 and 70, drawn to an assay for selecting a therapeutic agent, classified in class 435, subclass 2.
 - XI. Claims 39-40, drawn to a method of filtering a biological fluid to remove a virus pseudotyped, classified in class 435, subclass 174.

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- XII. Claims 71-73, drawn to an antibody that specific for an epitope of CCR5, classified in class 424, subclass 141.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of groups I, II, III V, X, and XI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions of Groups, I, II, II, V, X and XI are directed to different methods that they have different models of operations, e.g. the method of group I is for detecting a presence of a translocation promoter agent, whereas the method of group XI is to filter and remove a virus.
3. Inventions IV, VI, VII, VIII, IX and XII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions of groups IV, VI, IX and XII are directed structurally and functionally different methods, e.g. the product of group VII is a non-human transgenic animal, whereas the product of group XII is an antibody.
4. Inventions of Groups V and XII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different product, such as AZT, rather than an antibody against CCR5.
5. Because these inventions are distinct for the reasons given above and the search required for Group V is not required for Group XII, and search for group I does not need search for group XI, restriction for examination purposes as indicated is proper.
6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the


currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao Qun Li whose telephone number is 571-272-0904. The examiner can normally be reached on 7:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bao Qun Li
Art Unit 1648
August 09, 2004


JAMES HOUSEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600
8/23/04